

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MARTIN MISHTAKU,

Plaintiff,

v.

PRESIDENTIAL LUXURY LIMOUSINES
INC. and DAVID YAHODAH,

Defendants.
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MEMORANDUM AND ORDER

1:23-cv-01501-OEM-CLP

ORELIA E. MERCHANT, United States District Judge:

On February 26, 2023, plaintiff Martin Mishtaku (“Plaintiff”) filed the instant action against defendants Presidential Luxury Limousines Inc. (“Presidential”) and David Yahodah (“Yahodah”) (together with Presidential, “Defendants”), bringing causes of action for declaratory judgment and violations of the Fair Labor Standards Act (the “FLSA”). Complaint (“Compl.”), ECF 1 at 8-9.

On March 7, 2023, Plaintiff filed an executed summons evidencing that he had properly served Presidential with a summons and copy of his complaint. Presidential Executed Summons, ECF 6. On March 27, 2023, Plaintiff filed an executed summons evidencing that he had properly served Yahodah with a summons and copy of his complaint. Yahodah Executed Summons, ECF 7.

To date, neither Presidential nor Yahodah have appeared in this action. On June 8, 2023, Plaintiff filed a request for a certificate of default. Request for Certificate of Default, ECF 10. On June 15, 2023, the Clerk of Court entered a certificate of default as to both Defendants. Certificate of Default, ECF 11.

On August 24, 2023, Plaintiff filed a motion for default judgment against Defendants. Motion for Default Judgment (the “Motion”), ECF 14. This Court respectfully referred Plaintiff’s motion to Magistrate Judge Pollak on August 28, 2023. Magistrate Judge Pollak held an inquest hearing on February 7, 2024, for which Defendants failed to appear. February 7, 2024 Minute Entry.

Reviewing Plaintiff’s motion on the papers, Magistrate Judge Pollak issued a report and recommendation (the “R&R”) as to Plaintiff’s motion on February 29, 2024. R&R, ECF 19. The R&R clearly stated that “[a]ny objections to this Report and Recommendation must be filed with the Clerk of the Court within fourteen (14) days. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2); *see also* Fed. R. Civ. P. 6(a) (providing the method for computing time). Failure to file objections within the specified time waives the right to appeal the District Court’s order. *See, e.g., Caidor v. Onondaga Cty.*, 517 F.3d 601, 604 (2d Cir. 2008).” R&R at 29. Plaintiff served a copy of the R&R on Defendants, *see* R&R Affidavit of Service, ECF 20, but to date no party filed an objection to the R&R.

If clear notice has been given of the consequences of failing to object and there are no objections, the Court may adopt the R&R without de novo review. *See Smith v. Campbell*, 782 F.3d 93, 102 (2d Cir. 2015) (“Where parties receive clear notice of the consequences, failure to timely object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.”) (internal citations omitted). The Court will excuse the failure to object and conduct de novo review if it appears that the magistrate judge may have committed plain error. *See Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000). No such error appears in Magistrate Judge Pollak’s thorough and well-written decision. Accordingly, the Court adopts the R&R.

Accordingly, a default judgment shall be entered against Defendants Presidential Luxury Limousines Inc. and David Yahodah and Plaintiff is awarded: 1) \$60,297.03 representing unpaid minimum wages and overtime pay under the NYLL; 2) \$60,297.03 in liquidated damages under the NYLL; and 3) \$10,000 in attorney's fees and \$955.00 in costs. Additionally, Plaintiff's motion for a declaratory judgment that he was an employee of Defendants is granted and his motion for a declaratory judgment as to his receipt of wage notice and wage statements is denied.

The Clerk of Court is respectfully directed enter a judgment in accordance with this Order and to close this case.

SO ORDERED.

/s/ Orelia E. Merchant
ORELIA E. MERCHANT
United States District Judge

Dated: Brooklyn, New York
March 25, 2024